

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Case No. 1:22-cv-00534-KG-LF

MAUREEN HARRINGTON, as personal
representative for the estate of BLAINE
HARRINGTON III,

Plaintiff,

v.

BLUE SKY CAPITAL, LLC,

Defendant.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S
RESUBMITTED REQUEST FOR LEAVE TO FILE SURREPLY**

Plaintiff/counter-defendant Maureen Harrington ("Plaintiff"), as personal representative for the estate of Blaine Harrington III ("Blaine"), hereby files this memorandum in opposition to defendant/counter-plaintiff Blue Sky Capital, LLC's ("Defendant") Resubmitted Request for Leave to File Surreply (the "Motion for Leave to File") [D.E. 50], and states as follows:

1. The Motion for Leave to File seeks leave to file a surreply (which Defendant attaches in full to the Motion for Leave to File to ensure that the Court reviews it regardless of whether such motion is granted) with respect to Plaintiff's Motion for Summary Judgment.

2. Defendant, unhappy with the suggestion that it 'lied' in proffering a former employee's testimony, wants the opportunity to file a surreply to address the issue.

3. A surreply, however, is plainly unnecessary. Defendant was either disingenuous in its citation of Mr. Neff's testimony or it was not. The *entire* deposition transcript is attached to Plaintiff's motion for summary judgment [D.E. 39-7], and the Court is certainly capable of reviewing such and making its own determinations with respect to the testimony.

4. That Mr. Squires takes umbrage at the verbiage of the reply memorandum is not justification to depart from the de facto rule that a surreply is not ordinarily allowed.

5. The proposed surreply does not raise new legal arguments or provide the Court with caselaw that was overlooked in the completed briefing (i.e., things that might actually be useful in a surreply). Rather, it seeks only to make a factual challenge with respect to a deposition transcript and what Mr. Neff said/did not say.

6. There is simply no justification for expanding the briefing any further.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order: (a) denying the Motion for Leave to File and (b) for such further relief as the Court deems proper.

Dated: January 30, 2024.

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By: /s/ Daniel DeSouza
Daniel DeSouza, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will electronically serve all counsel of record.

/s/ Daniel DeSouza
Daniel DeSouza, Esq.